

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

v.

12 JIOVANNI NUNEZ,

13 Defendant.

CASE NO. CR20-0097-JCC

ORDER

14

15 This matter comes before the Court on the Government and Defendant Jiovanni Nunez's
16 stipulated motion to continue the trial date and the pretrial motions deadline (Dkt. No. 36). Mr.
17 Nunez is charged with two counts of possession of fentanyl with intent to distribute. (Dkt. No.
18 28.) The parties move to continue trial from February 8, 2021 to May 3, 2021; continue the
19 pretrial motions deadline from January 8, 2021 to April 2, 2021; and exclude the time period
20 from the date of this order to the new trial date for purposes of the Speedy Trial Act. (*See*
21 generally Dkt. No. 36.) The Court previously granted the parties' stipulated request for a trial
22 continuance from September 2020 to February 2021 to allow Mr. Nunez's counsel sufficient
23 time to prepare for trial given the volume of discovery in the case and the impact of the COVID-
24 19 pandemic on counsel's ability to adequately review discovery with Mr. Nunez. (Dkt. No. 35.)
25 The parties seek a second continuance because, despite due diligence, additional time is needed
26 for Mr. Nunez's counsel to adequately prepare for trial given the volume of discovery, which

1 includes extensive discovery related to potential uncharged offenses, and the impact of the
2 pandemic on trial preparation. (Dkt. No. 36 at 2.) Since the parties filed their stipulated motion,
3 the Court issued another General Order in response to the continuing COVID-19 outbreak,
4 continuing all criminal trials scheduled to occur before March 31, 2021. W.D. Wash, General
5 Order No. 18-20 at 2 (Dec. 30, 2020).

6 Having thoroughly considered the motion, the relevant record, and the Court's General
7 Orders addressing measures to reduce the spread and health risks from COVID-19, incorporated
8 herein by reference, the Court hereby FINDS:

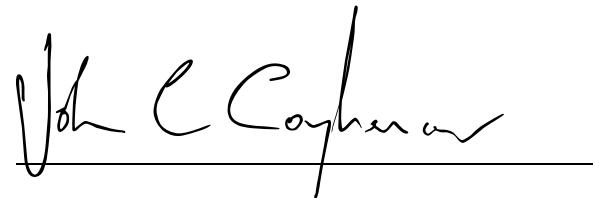
- 9 1. Taking into account the exercise of due diligence, the failure to grant a continuance
10 would deny counsel for the defendant reasonable time necessary for effective preparation,
11 *see* 18 U.S.C. § 3161(h)(7)(B)(iv), and would therefore result in a miscarriage of justice,
12 *see* 18 U.S.C. § 3161(h)(7)(B)(i).
- 13 2. The additional time requested is a reasonable period of delay, as the defendant has
14 requested more time to prepare for trial, to investigate the matter, to gather evidence
15 material to the defense, and to consider possible defenses.
- 16 3. The time between the current trial date and the new trial date is necessary to provide Mr.
17 Nunez's counsel with reasonable time to prepare for trial considering counsel's schedule
18 and all the facts set forth above.
- 19 4. The COVID-19 pandemic has made it difficult for the Court to obtain an adequate
20 spectrum of jurors to represent a fair cross section of the community, which makes
21 proceeding on the current case schedule impossible or, at a minimum, would result in a
22 miscarriage of justice. *See* 18 U.S.C. § 3161(h)(7)(B)(i).
- 23 5. Public health guidance has impacted the ability of jurors, witnesses, counsel, and Court
24 staff to be present in the courtroom. Therefore, proceeding with trial as scheduled would
25 likely be impossible. *See* 18 U.S.C. § 3161(h)(7)(B)(i).
- 26 6. The ends of justice served by granting a continuance outweigh the best interests of the

1 public and the defendant in a speedy trial. *See* 18 U.S.C. § 3161(h)(7)(A).

2 For the foregoing reasons, the Court GRANTS the motion to continue the trial date and
3 pretrial deadlines in part (Dkt. No. 36). The trial date is CONTINUED to May 3, 2021, at 9:30
4 a.m. The Court further ORDERS that the time between the date this order is issued and the new
5 trial date is excludable time under the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(7)(A),
6 3161(h)(7)(B)(i), and 3161(h)(7)(B)(iv). Any pretrial motions must be filed no later than March
7 29, 2021.

8 DATED this 4th day of January 2021.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE